AO 91 (Rev. 11/11) Criminal Complaint

U.S. DISTRICT COURT - N.D. OF N.Y.
FILED
JUN - 9 2017
AT____ O'CLOCK______
Lawrence K. Baerman, Clerk - Syracuse

# UNITED STATES DISTRICT COURT
for the
Northern District of New York

UNITED STATES OF AMERICA
v.

MARK J. WALLACE, JR.
Defendant.

Case No. 5:17-MJ-270 (DEP)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief. On or about the date(s) of January 2014 to June 2017 in the county of Onondaga in the Northern District of New York the defendant violated:

Code Section	*Offense Description*
18 USC §§2252A(a)(2)(A) and 2252A(a)(5)(B)	Knowingly receiving child pornography using a means and facility of interstate and foreign commerce, and in and affecting such commerce; and knowingly possessing and accessing with intent to view child pornography that had been transported using any means of interstate and foreign commerce and in and affecting such commerce by any means, including by computer.

This criminal complaint is based on these facts:
See attached affidavit

☒ Continued on the attached sheet.

Complainant's signature

Lon Ziankoski, Special Agent
Printed name and title

Sworn to before me and signed in my presence.

Date: 6/9/2017

Judge's signature

City and State: Syracuse, NY

Hon. David E. Peebles, U.S. Magistrate Judge
Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Lon Ziankoski, having been first duly sworn, do hereby depose and state as follows:

1. I am a Special Agent assigned to Homeland Security Investigations (HSI) within the Department of Homeland Security and have been employed in that capacity since September 2011. I am currently assigned to the HSI office in Syracuse, New York where I am responsible for conducting investigations of criminal violations of immigration and customs laws and related statutes. As an HSI Special Agent my duties include the enforcement of federal criminal statutes involving child exploitation laws. I have worked closely with other law enforcement officers who have engaged in numerous investigations involving child exploitation and child pornography and who have received training in the area of child pornography and child exploitation. Since becoming employed as a federal agent, I have completed the Criminal Investigator Training Program and ICE Special Agent Training at the Federal Law Enforcement Training Center in Brunswick, Georgia. I have also received Internet Crimes Against Children (ICAC) certification in Undercover Chat Investigations. I have taught child exploitation investigations to foreign law enforcement agencies at the International Law Enforcement Academy in Gaborone, Botswana. Prior to appointment as an Agent, Affiant was employed as an Oswego County Sheriff's Deputy for approximately two years. I served honorably in the United States Army, 10th Mountain Division as a Non-Commissioned Officer with deployments in support of Operation Enduring Freedom and Operation Iraqi Freedom. Your affiant has earned a Bachelor's Degree in Biology from Rochester Institute of Technology, a Doctorate in Chiropractic from Palmer College, and a Master's in Business Administration from Sul Ross Texas State University.

2. I am an investigative or law enforcement officer of the United States within the

meaning of Title 18 United States Code, Section 2510(7), that is, an officer of the United States who is empowered by law to conduct investigations of and to make arrests for offenses enumerated in Title 18, United States Code, Section 2516(1). As a Special Agent, I am authorized to seek and execute federal arrest and search warrants for Title 18 criminal offenses, including offenses related to the sexual exploitation of minors, specifically those involving the possession, distribution of child pornography in violation of Title 18, United States Code, Section 2252A.

3. This affidavit is made in support of a criminal complaint charging Mark J. Wallace with violation of Title 18, United States Code, Sections 2252A(a)(2) and 2252A(a)(5); (receipt and possession of child pornography).

4. The statements in this affidavit are based in part on information provided by New York State Police, and on my investigation of this matter. Since this affidavit is being submitted for the limited purpose of securing a criminal complaint, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish probable cause to believe that Mark J. WALLACE has violated Title 18, United States Code, Sections 2252A(a)(2) and 2252A(a)(5) (receipt and possession of child pornography).

Kik Messenger Application

5. The Kik Messenger application is primarily a social media mobile device platform designed and managed by Kik Interactive Incorporated, a Waterloo, Canada based company, for the purpose of mobile messaging and communication. To use this application, a user downloads the mobile messaging application via an applications service such as the Google Play Store, Apple iTunes, or other similar mobile application provider. Once downloaded and installed, the user is prompted to create an account and a username. This username will be the primary account

identifier. The user also has a display name, which will be what other users initially see when transmitting messages back and forth. As part of the account creation process, Kik users are asked to supply a valid email address, create a password, provide an optional date of birth, and user location. The user also has the option of uploading a "profile avatar" that is seen by other users Once the Kik user has created an account; the user is able to locate other users via a search feature. The search feature usually requires the user to know the intended recipient's username. Once another user is located or identified, Kik users can send messages, images, and videos between the two parties.

6. Kik Messenger also allows users to create chat rooms, of up to 50 people, for the purpose of communicating and exchanging images and videos. These rooms are administered by the creator who has the authority to ban and remove other users from the created room. According to Kik Messenger, more than 40% of the Kik users chat in "groups" and approximately 300,000 new groups are created every day. These groups are frequently created with a "hashtag" allowing the group or chat to be identified more easily. Once the group or chat is created Kik users have the option of sharing the "link" with all of their contacts or anyone they wish.

7. Kik Messenger users frequently advertise their Kik usernames on various social networking sites in order to meet and connect with other users. In some cases, Kik also provides various avenues, such as dating sites and social media applications, for meeting other users. HSI undercover agents observed, in various chats, that many of the users stated they felt safe using Kik Messenger as a means of trading child pornography and for other illegal activities due to the fact that "Kik is a Canadian based company and not subject to the same United States laws." HSI undercover agents have noted messages posted in Kik Messenger chat rooms relating to the enforcement, deletion, or banning of users and rooms by Kik Messenger for the purpose of

exchanging or distributing child pornography. HSI agents noted the comments to include the continued creation of new rooms and new user accounts to circumvent Kik Messenger's enforcement efforts.

Dropbox

8. Dropbox is a file hosting service operated by American company Dropbox, Inc., headquartered in San Francisco, California, that offers cloud storage, file synchronization, personal cloud, and client software. Dropbox creates a special folder on the user's computer, the contents of which are then synchronized to Dropbox's servers and to other computers and devices that the user has installed Dropbox on, keeping the same files up-to-date on all devices. Dropbox users are offered a free account with a set storage size, with paid subscriptions available that offer more capacity and additional features. Dropbox Basic users are given 2 gigabytes of free storage space.

BACKGROUND OF THE INVESTIGATION

9. On March 24, 2017, New York State Police Investigator Hudson adopted an investigation from a cyber-tip in which Dropbox reported three (3) video files consistent with child pornography were uploaded to Dropbox account "heavyfoot48@hotmail.com," with screen name "Mark Wall." A Dropbox upload log was provided with the cyber-tip which shows that the three (3) files were uploaded on 12/04/2015. Drobox also provided a login IP for the account of 172.77.34.21 on 09/04/16 at 9:54:41 UTC and assigned to Frontier Communications.

10. On April 3, 2017, the State of New York, Office of Attorney General, issued a Subpoena to Frontier Communications for IP address 172.77.34.21 on 09/04/2016 at 09:54:41UTC and to Dropbox for account heavyfoot48@hotmail.com. On April 4, 2017, Frontier Communications provided subscriber information for IP 172.77.34.21 in the name of a female with the initials "P.P." residing on Kibby Road, Lysander, NY. Frontier Communications also

indicated that the length of service had been from 3/8/16 to present.

11. On May 15, 2017, a subpoena response from Dropbox provided no further information.

12. On June 5, 2017, your affiant began to assist New York State Police Investigator Harrington in the investigation, and we reviewed together the case and the three (3) videos that were included in the Dropbox cyber-tip. The videos are available for the Court's inspection upon request, and are described as follows:

a. **03ee6dac-81b7-4a0c-bcd4-057424d7173b (1).mp4,** uploaded at 12/04/15 at 3:08pm, is a file comprising three video clips. The first shows a prepubescent juvenile female approximately 12 years of age, wearing pants and socks, dancing while removing clothes in front of the camera. The second and third clips show the juvenile exposing her vagina in lewd and lascivious manner and inserting foreign objects into her vagina.

b. **71429c2f-fd52-4803-a050-f81c36b60284.mp4,** uploaded on 12/04/15 at 03:10pm, depicts an adult male's erect penis penetrating a prepubescent female vagina.

c. **b9beab9a-1291-40eb-8995-4b3cdb599428.mp4,** uploaded on 12/04/15 at 03:08pm, depicts a juvenile female removing her clothes while dancing in front of a camera, eventually exposing her vagina and breasts in a lewd and lascivious manner.

13. On June 5, 2017, a query on Spokeo, an open-source internet search tool, revealed the email address heavyfoot48@hotmail.com is associated with Mark Wallace, Kibby Rd., Baldwinsville, NY. This is the same road provided on the Frontier subpoena return. The Dropbox username of "Mark Wall" is also consistent with WALLACE being the user of the account.

14. On June 8, 2017, your affiant and NYSP Investigator Harrington attempted to interview WALLACE at his place of employment. At approximately 8:30 am, we met with

WALLACE and advised him that law enforcement was conducting an investigation relating to Dropbox and the transmission of images of child pornography. WALLACE consented to an interview and for law enforcement to view his phone. WALLACE was then transported to the New York State Police barracks, located in Lysander, NY. At approximately 8:44 am, WALLACE waived his right to counsel and agreed to an interview which was audio and video recorded.

15. During the interview, WALLACE admitted to receiving and viewing child pornography. WALLACE stated he first saw child pornography about two to three years ago. WALLACE said he would have sexually-related chats with people on the Kik mobile social media application. WALLACE stated that during one of these chats, someone sent him child pornography -- either as a link to Dropbox that contained child pornography or by sending him pictures or videos of child pornography in the Kik app. WALLACE further stated that he understood child pornography as pictures and videos of children involved in sexual acts, either with each other or adults. WALLACE stated that although he did not search for the child pornography the first time, it interested him, and he became sexually aroused by it. WALLACE stated that since then he has continued to chat with more people who would send him child pornography, always over the Kik app.

16. WALLACE further stated during the interview that his Kik username is "Drumgod48." He stated that when people send him pictures or links on Kik, he sometimes saves them to his Dropbox account or on his phone's gallery. WALLACE admitted to using the Dropbox account heavyfoot48@hotmail.com, until it was "shut down." WALLACE states he now uses the Dropbox account heavyfoot48@gmail.com. WALLACE said he currently has child pornography pictures and videos on his cell phone and in his Dropbox account.

17. WALLACE also provided oral and written consent to view his phones and social

media accounts to include Dropbox and Kik. Your affiant then previewed WALLACE's phone, which is a Samsung Galaxy, model number SM-J327P, serial number 352510088975760. Your affiant observed WALLACE's Kik account Drumgod48. Within this account, your affiant observed a chat communication between a Kik account user (hereinafter "Individual A") and WALLACE's account, Drumgod48. During the communication, Individual A states that he spies on his 13 year-old daughter and posts a nude picture of a juvenile female changing. WALLACE then asked if he (WALLACE) could see the youngest pictures Individual A has of the daughter. WALLACE also asked for pictures and videos of young boys. Individual A then stated he has a 5 year-old nephew and 3 year-old niece, and that they are too young to know if they are being touched. Individual A then stated that in the pictures he is penetrating the boy with his finger and rubbing his penis on the boy's anus. WALLACE asked for these pictures and when he received them, commented: "That's ok have one of his cock too?" "nice," "I like that," "wish you had vids," "your inside him, Im sure that's nice and tight." Individual A then states that he has sexual contact with his niece and describes how he engages in oral and vaginal sex with her. WALLACE responds, "wish I could see that" and "wish you had vids." WALLACE then receives several images of a nude toddler's vagina being manipulated by an adult male hand. Your affiant then ended the preview of the Kik chat.

18. Your affiant then located the Dropbox account heavyfoot48@gmail.com within the WALLACE's Samsung Galaxy cellphone, which contained hundreds of images and video files. Within these files, your affiant observed an image file depicting a juvenile prepubescent girl lying naked, pulling her legs back, exposing her vagina in a lewd and lascivious manner. Your affiant then ended the preview and located the gallery file located on the Samsung Galaxy. Your affiant observed several images of child pornography, saved and located within a gallery folder. These

images were the ones received from Individual A in the aforementioned Kik chat dialogue.

CONCLUSION

19. Based on the foregoing information, there is probable cause to conclude that Mark J. WALLACE has knowingly received and possessed child pornography using a means and facility of interstate and foreign commerce, and in and affecting such commerce, that is, through Kik messenger sharing, in violation of Title 18, United States Code, Sections 2252A(a)(2) and 2252A(a)(5).

Lon Ziankoski, Special Agent
Homeland Security Investigations
Department of Homeland Security

Sworn and subscribed before me
this 9th day of June, 2017.

HON. DAVID E. PEEBLES
UNITED STATES MAGISTRATE JUDGE